Before the Federal Communications Commission
Washington, DC 20544

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| In the Matter of | ) | |
| | ) | |
| Restoring Internet Freedom | ) | WC Docket No. 17-108 |

Comments of
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# Comments on the Draft NPRM, FCC-CIRC1705-05

At 34: "The structure of Title II appears to be a poor fit for broadband Internet access service. In the Title II Order, the Commission, on its own motion, forbore either in whole or in part on a permanent or temporary basis from 30 separate sections of Title II as well as from other provisions of the Act and Commission rules. The significant forbearance the Commission granted in in the Title II Order suggests the highly prescriptive regulatory framework of Title II is unsuited for the dynamic broadband Internet access service marketplace. We seek comment on this analysis, and on what weight we should give this analysis in examining the future of this model of regulation."

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*...if the only tool you have is a hammer, [you] treat everything as if it were a nail.*

— Abraham H. Maslow (1962)

Commenter agrees that Title II is indeed a poor fit for broadband Internet access service *in general*. The problem with the existing FCC regulations is that it views all ISPs, large and small, as pretty much the same. Utility rules applied to ISPs that operate in a competitive environment is an over-broad application to regulation – the FCC recognizes this fact with its forbearance rulings – and tries to regulate elements in the Internet marketplace which are already competitive in nature.

In my earlier comment, I talked about ISPs providing one, two, or three types of services: access services (customer to Internet), switching services (routing and switching packets), and applications services( Web, mail, VoIP, chat, FTP, VPN, NTP, SSH, DNS, WHOIS, gopher, IRC, and more). The Network Neutrality issue as I understand it applies only to access and switching services; there is already a great deal of competition in the applications services if access/switching doesn't get in the way.

I propose that instead of the blind application of Title II status to all broadband access providers, and possibly spilling over into other types of providers, the FCC should instead look to the elements of the broadband service offered to customers in determining whether Title II should apply to a particular ISP.

1. "Exclusive access" to a facility is DEFINED as access to said facilities by virtue of ownership or exclusive contract, and not arms-length leases/grants of unbundled network elements (UNE) or equivalent that are freely available to others.
2. An Internet Service Provider (ISP) SHALL be subject to Title II rules if, in its access services, the links between customer and ISP are
    1. provisioned using "public" cable/fiber plant otherwise already covered by Title II rules,
    2. with said ISP having exclusive access to provisioning on said cable/fiber plant.

    The Title II rules SHALL apply to access services *and switching services* only; Title II rules SHALL NOT apply to applications services
3. Any ISP providing access services by wireless means, including cellular telephone data service, are deemed to be provisioned via radio links, a shared resource, and therefore SHALL NOT be subject to Title II rules. (The exclusion of cellular data access and switching from Title II rules is open for debate.)
4. Any ISP providing access services exclusively by public switched telephone service (PSTN) and/or UNE leases/grants are deemed to be provisioned via shared plant, and therefore SHALL NOT be subject to Title II rules
5. Absent indications of necessity to the contrary, ISPs not offering access services SHALL NOT be subject to Title II rules.

In this proposal, the two major types of ISPs affected by the determination of Title II rule application are the telephone companies and the cable-TV companies. If the FCC sees a need, cellular companies offering ISP access/switching service may also be subject to Title II rules.

This proposed regulation frees all other ISPs from the Title II burden.

Respectfully submitted for your consideration,
Stephen Satchell

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